



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2016-0303; FRL-9948-13-Region 7]

**Approval and Promulgation of Air Quality Implementation Plans;
State of Kansas; Cross-State Air Pollution Rule**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a December 1, 2015, State Implementation Plan (SIP) submittal from Kansas concerning allocations of Cross-State Air Pollution Rule (CSAPR) emission allowances. Under CSAPR, large electricity generating units in Kansas are subject to a Federal Implementation Plan (FIP) requiring the units to participate in CSAPR's Federal trading program for annual emissions of nitrogen oxides (NO_x). This action approves Kansas's adoption into its SIP of state regulations establishing state-determined allocations to replace EPA's default allocations to Kansas units of CSAPR allowances for annual NO_x emissions for 2017 through 2019. EPA is approving the SIP revision because it meets the requirements of the Clean

Air Act (CAA) and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of this SIP revision does not alter any provision of CSAPR's Federal trading program for annual NO_x emissions as applied to Kansas units other than the allowance allocation provisions, and the FIP requiring the units to participate in the trading program (as modified by the SIP revision) remains in place. The approval is being issued as a direct final rule without a prior proposed rule because EPA views it as uncontroversial and does not anticipate adverse comment.

DATES: This direct final rule will be effective [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further notice, unless EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2016-0303, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Background on CSAPR and CSAPR-related SIP Revisions
- III. Conditions for Approval of CSAPR-related SIP Revisions
- IV. Kansas's SIP Submittal and EPA's Analysis
 - A. Kansas's SIP submittal
 - B. EPA's analysis of Kansas' submittal
 - 1. Timeliness and Completeness of SIP Submittal
 - 2. Methodology Covering All Allowances Potentially Requiring Allocation
 - 3. Assurance that Total Allocations Will Not Exceed the State Budget
 - 4. Timely Submission of State-determined Allocations to EPA
 - 5. No Changes to Allocations Already Submitted to EPA or Recorded
 - 6. No Other Substantive Changes to Federal Trading Program Provisions
- V. EPA's Action on Kansas' Submittal

I. What is Being Addressed in this Document?

EPA is taking direct final action to approve a revision to the SIP for Kansas concerning allocations of allowances used in the CSAPR¹ Federal trading program for annual emissions of NO_x. Large electricity generating units in Kansas are subject to a CSAPR FIP that requires the units to participate in the Federal CSAPR NO_x Annual Trading Program.² Each of CSAPR's Federal trading programs includes default provisions governing the allocation among participating units of emission allowances used for compliance under that program. CSAPR also provides a process

¹ Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011), (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through DDDDD of 40 CFR part 97).

² EPA has proposed to replace the terms "Transport Rule" and "TR" in the text of the *Code of Federal Regulations* with the updated terms "Cross-State Air Pollution Rule" and "CSAPR." 80 FR 75706, 75759 (December 3, 2015). Except where otherwise noted, EPA uses the updated terms here.

for the submission and approval of SIP revisions to replace EPA's default allocations with state-determined allocations.

The SIP revision approved in this action incorporates into Kansas' SIP state regulations establishing state-determined allowance allocations to replace EPA's default allocations to Kansas units of CSAPR NO_x Annual allowances issued for the control periods in 2017 through 2019. EPA is approving the SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of this SIP revision does not alter any provision of the CSAPR NO_x Annual Trading Program as applied to Kansas units other than the allowance allocation provisions, and the FIP requiring those units to participate in the program (as modified by this SIP revision) remains in place. Because the SIP revision addresses only the control periods in 2017 through 2019, absent submission and approval of a further SIP revision, allocations of CSAPR NO_x Annual allowances for control periods in 2020 and later years will be made pursuant to the default allocation provisions.

Large electricity generating units in Kansas are also subject to an additional CSAPR FIP requiring them to participate in the Federal CSAPR SO₂ Group 2 Trading Program. Kansas's SIP

submittal does not seek to replace the default allocations of CSAPR SO₂ Group 2 allowances to Kansas units. Approval of this SIP revision concerning another CSAPR trading program has no effect on the CSAPR SO₂ Group 2 Trading Program as applied to Kansas units, and the FIP requiring the units to participate in that program remains in place.

Section II of this document summarizes relevant aspects of the CSAPR Federal trading programs and FIPs as well as the range of opportunities states have to submit SIP revisions to modify or replace the FIP requirements while continuing to rely on CSAPR's trading programs to address the states' obligations to mitigate interstate air pollution. Section III describes the specific conditions for approval of such SIP revisions. Section IV contains EPA's analysis of Kansas' SIP submittal, and section V sets forth EPA's action on the submittal.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must

do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

II. Background on CSAPR and CSAPR-related SIP Revisions

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended, CSAPR requires twenty-eight Eastern states to limit their statewide emissions of SO₂ and/or NO_x in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain three National Ambient Air Quality Standards (NAAQS): the 1997 ozone NAAQS, the 1997 annual fine particulate matter (PM_{2.5}) NAAQS, and the 2006 24-hour PM_{2.5} NAAQS. The emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO₂, annual NO_x, and/or ozone-season NO_x by each covered state's large electricity generating units. The budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance

with the emissions limitations, CSAPR established four Federal emissions trading programs: a program for annual NO_x emissions, a program for ozone-season NO_x emissions, and two geographically separate programs for annual SO₂ emissions. CSAPR also established up to three FIPs applicable to the large electricity generating units in each covered state. Each CSAPR FIP requires a state's units to participate in one of the four CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's Federal emissions trading programs or state emissions trading programs integrated with the Federal programs.³ Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's Federal trading program for ozone-season NO_x emissions (or an integrated state trading program), a state may also expand trading program

³ See 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR Federal trading programs or integrated state trading programs.

applicability to include certain smaller electricity generating units. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. A state whose units are subject to multiple CSAPR FIPs and Federal trading programs may submit SIP revisions to modify or replace the requirements under either some or all of those FIPs.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.⁴ Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in section III below. Under the first alternative - an "abbreviated" SIP revision - a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR Federal trading

⁴ CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. *See* §52.38(a)(3), (b)(3); §52.39(d), (g).

program for the state.⁵ Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant Federal trading program in place for the state's units.

Under the second alternative - a "full" SIP revision - a state may submit a SIP revision that upon approval replaces a CSAPR Federal trading program for the state with a state trading program integrated with the Federal trading program, so long as the state trading program is substantively identical to the Federal trading program or does not substantively differ from the Federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.⁶ For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the Federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's SIP that was the

⁵ §52.38(a)(4), (b)(4); §52.39(e), (h).

⁶ §52.38(a)(5), (b)(5); §52.39(f), (i).

basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR Federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.⁷ Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR Federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.⁸ Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the Federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units

⁷ §52.38(a)(6), (b)(6); §52.39(j).

⁸ §52.38(a)(5)(iv)-(v), (a)(6), (b)(5)(v)-(vi), (b)(6); §52.39(f)(4)-(5), (i)(4)-(5), (j).

will continue to apply, unless EPA's approval of the SIP revision provides otherwise.⁹

Certain CSAPR Phase 2 emissions budgets have been remanded to EPA for reconsideration.¹⁰ However, the CSAPR trading programs remain in effect and all CSAPR emissions budgets likewise remain in effect pending EPA final action to address the remands. Neither of the CSAPR emissions budgets applicable to Kansas units has been remanded.

In 2015, EPA proposed to update CSAPR to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 ozone NAAQS. Among other things, the proposed rule would establish a FIP requiring Kansas units to participate in the CSAPR NO_x Ozone Season Trading Program and would make technical corrections and nomenclature changes throughout the CSAPR regulations, including the CSAPR FIPs at 40 CFR part 52 and the CSAPR Federal trading program regulations for annual NO_x, ozone-season NO_x, and SO₂ emissions at 40 CFR part 97.¹¹

⁹ §52.38(a)(7), (b)(7); §52.39(k).

¹⁰ *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 138 (D.C. Cir. 2015).

¹¹ 80 FR 75706, 75710, 75757 (December 3, 2015).

III. Conditions for Approval of CSAPR-related SIP Revisions

Each CSAPR-related abbreviated or full SIP revision must meet the following general submittal conditions:

- *Timeliness and completeness of SIP submittal.* If a state wants to replace the default allowance allocation or applicability provisions of a CSAPR Federal trading program, the complete SIP revision must be submitted to EPA by December 1 of the year before the deadlines described below for submitting allocation or auction amounts to EPA for the first control period for which the state wants to replace the default allocation and/or applicability provisions.¹² (This SIP submission deadline is inoperative in the case of a SIP revision that seeks only to replace a CSAPR FIP and Federal trading program with a SIP and a substantively identical state trading program integrated with the Federal trading program). The SIP submittal completeness criteria in section 2.1 of appendix V to 40 CFR part 51 also apply.

¹² 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii); § 52.39(e)(2), (f)(6), (h)(2), (i)(6).

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP seeking to address the allocation or auction of emission allowances must meet the following further conditions:

- *Methodology covering all allowances potentially requiring allocation.* For each Federal trading program addressed by a SIP revision, the SIP revision's allowance allocation or auction methodology must replace both the Federal program's default allocations to existing units¹³ at 40 CFR 97.411(a), 97.511(a), 97.611(a), or 97.711(a), as applicable, and the Federal trading program's provisions for allocating allowances from the new unit set-aside (NUSA) for the state at 40 CFR 97.411(b)(1) and 97.412(a), 97.511(b)(1) and 97.512(a), 97.611(b)(1) and 97.612(a), or 97.711(b)(1) and 97.712(a), as applicable.¹⁴ In the case of a state with Indian country within its borders, while the SIP revision may neither alter nor assume the Federal program's provisions for administering the Indian country NUSA for the state, the SIP revision must include procedures addressing the disposition of any otherwise unallocated

¹³ In the context of the approval conditions for CSAPR-related SIP revisions, an "existing unit" is a unit for which EPA has determined default allowance allocations (which could be allocations of zero allowances) in the rulemakings establishing and amending CSAPR. A spreadsheet showing EPA's default allocations to existing units is posted at www.epa.gov/crossstaterule/techinfo.html.

¹⁴ §52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii); §52.39(e)(1), (f)(1), (h)(1), (i)(1).

allowances from an Indian country NUSA that may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures.¹⁵

- *Assurance that total allocations will not exceed the state budget.* For each Federal trading program addressed by a SIP revision, the total amount of allowances auctioned or allocated for each control period under the SIP revision (prior to the addition by EPA of any unallocated allowances from any Indian country NUSA for the state) may not exceed the state's emissions budget for the control period less the sum of the amount of any Indian country NUSA for the state for the control period and any allowances already allocated to the state's units for the control period and recorded by EPA.¹⁶ Under its SIP revision, a state is free to not allocate allowances to some or all potentially affected units, to allocate or auction allowances to entities other than potentially affected units, or to allocate or auction fewer than the maximum permissible quantity of allowances and retire the remainder.

- *Timely submission of state-determined allocations to EPA.*
The SIP revision must require the state to submit to EPA

¹⁵ See §§97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii).

¹⁶ §52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A); §52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

the amounts of any allowances allocated or auctioned to each unit for each control period (other than allowances initially set aside in the state’s allocation or auction process and later allocated or auctioned to such units from the set-aside amount) by the following deadlines.¹⁷ Note that the submission deadlines differ for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

Units	Year of the Control Period	Deadline for Submission to EPA of Allocations or Auction Results
Existing	2017 and 2018	June 1, 2016.
	2019 and 2020	June 1, 2017.
	2021 and 2022	June 1, 2018.
	2023 and later years	June 1 of the fourth year before the year of the control period.
Other	All years	July 1 of the year of the control period.

- *No changes to allocations already submitted to EPA or recorded.* The SIP revision must not provide for any change to the amounts of allowances allocated or auctioned to any unit after those amounts are submitted to EPA or any change to any allowance allocation determined and recorded by EPA under the Federal trading program regulations.¹⁸

¹⁷ §52.38(a)(4)(i)(B)-(C), (a)(5)(i)(B)-(C), (b)(4)(ii)(B)-(C), (b)(5)(ii)(B)-(C); §52.39(e)(1)(ii)-(iii), (f)(1)(ii)-(iii), (h)(1)(ii)-(iii), (i)(1)(ii)-(iii).

¹⁸ §52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D); §52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

- *No other substantive changes to Federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also expands program applicability as described below.¹⁹ Any new definitions adopted in the SIP revision (in addition to the Federal trading program's definitions) may apply only for purposes of the SIP revision's allocation or auction provisions.²⁰

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR NO_x Ozone Season Trading Program (or an integrated state trading program) must meet the following further conditions:

- *Only electricity generating units with nameplate capacity of at least 15 MWe.* The SIP revision may expand applicability only to additional fossil fuel-fired boilers or combustion turbines serving generators producing electricity for sale, and only by lowering the generator nameplate capacity threshold used to determine whether a particular boiler or combustion turbine serving a particular generator is a potentially affected unit. The

¹⁹ §52.38(a)(4), (a)(5), (b)(4), (b)(5); §52.39(e), (f), (h), (i).

²⁰ §52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii); §52.39(e)(1), (f)(2), (h)(1), (i)(2).

nameplate capacity threshold adopted in the SIP revision may not be less than 15 MWe.²¹

- *No other substantive changes to Federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also addresses the allocation or auction of emission allowances as described above.²²

In addition to the general submittal conditions and the other applicable conditions described above, a CSAPR-related full SIP revision must meet the following further conditions:

- *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the complete Federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, or 97.702 through 97.735, as applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.
- *Only non-substantive substitutions for the term "State."*

The SIP revision may substitute the name of the state for

²¹ §52.38(b)(4)(i), (b)(5)(i).

²² §52.38(b)(4), (b)(5).

the term "State" as used in the Federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the trading program regulations.²³

- *Exclusion of provisions addressing units in Indian country.*

The SIP revision may not include references to or impose requirements on any unit in any Indian country within the state's borders and must not include the Federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.²⁴

IV. Kansas's SIP Submittal and EPA's Analysis

A. Kansas's SIP Submittal

In the CSAPR rulemaking, EPA determined that air pollution transported from Kansas unlawfully affected other states' ability to attain or maintain the 2006 24-hour PM_{2.5} NAAQS.²⁵ Kansas units meeting the CSAPR applicability criteria are consequently subject to CSAPR FIPs that require participation in the CSAPR NO_x Annual Trading Program and the CSAPR SO₂ Group 2 Trading Program.²⁶

²³ §52.38(a)(5)(iii), (b)(5)(iv); §52.39(f)(3), (i)(3).

²⁴ §52.38(a)(5)(iv), (b)(5)(v); §52.39(f)(4), (i)(4).

²⁵ 76 FR 48208, 48213 (August 8, 2011).

²⁶ 40 CFR 52.38(a)(2); §52.39(c); §52.882(a); §52.883.

On December 1, 2015, Kansas submitted to EPA an abbreviated SIP revision that, if approved, would replace the default allowance allocation provisions of the CSAPR NO_x Annual Trading Program for the state's EGUs for the control periods in 2017 through 2019 with provisions establishing state-determined allocations for those control periods but that would leave the corresponding CSAPR FIP and all other provisions of that trading program in place. The SIP submittal generally consists of a duly adopted state rule, K.A.R. 28-19-274 (Nitrogen oxides; allocations), which in turn adopts by reference a document entitled "TR NO_x annual allowance allocations for 2017, 2018, and 2019," dated July 17, 2015. The latter document contains tables establishing fixed amounts of allowances to be allocated to specified Kansas electricity generating units under the provisions of the state rule. For each of the years 2017, 2018, and 2019, there is a table with allocations of all allowances in the Kansas budget other than allowances in the Indian country NUSA for Kansas. For each of those years there is a second table with potential allocations to the same units of otherwise unallocated allowances from the Indian country NUSA for Kansas if all of those allowances should be made available by EPA for state allocation. The rule also includes provisions for computing potential allocations to the same units of otherwise

unallocated allowances from the Indian country NUSA for Kansas if some but not all of those allowances should be made available by EPA for state allocation. Finally, the rule includes provisions defining several terms used either in the rule's allocation provisions or in other definitions.

The SIP revision was submitted to EPA by a letter from the Kansas Secretary of Health and Environment acting as the designated representative of the Governor of Kansas. The letter describes steps taken by Kansas to provide public notice prior to adoption of the state rule. The letter also indicates that paragraphs 28-19-274(a)(2)(A) and (B) of the Kansas rule, which contain definitions of certain terms differing from the definitions of the same terms in the Federal trading program regulations, are excluded from the SIP submittal.

EPA has previously approved a separate Kansas SIP revision replacing the default allowance allocation provisions of the CSAPR NO_x Annual Trading Program for Kansas existing units for the control period in 2016.²⁷ At this time, Kansas has not submitted any SIP revision to modify or replace the CSAPR FIP that requires the state's units to participate in the CSAPR SO₂ Group 2 Trading Program.

²⁷ 80 FR 50789 (August 21, 2015).

B. EPA's Analysis of Kansas's Submittal

1. Timeliness and completeness of SIP submittal

Kansas' SIP revision seeks to establish state-determined allocations of CSAPR NO_x Annual allowances for the control periods in 2017, 2018, and 2019. Under 40 CFR 52.38(a)(4)(i)(B), the deadline for submission of state-determined allocations for the 2017 and 2018 control periods is June 1, 2016, which under §52.38(a)(4)(ii) makes December 1, 2015 the deadline for submission to EPA of a complete SIP revision establishing state-determined allocations for those control periods. Kansas submitted its SIP revision to EPA by a letter dated and delivered electronically on December 1, 2015, and EPA has determined that the submittal complies with the applicable minimum completeness criteria in section 2.1 of appendix V to 40 CFR part 51. Because Kansas's SIP revision was timely submitted and meets the applicable completeness criteria, it meets the condition under 40 CFR 52.38(a)(4)(ii) for timely submission of a complete SIP revision.

2. Methodology Covering All Allowances Potentially Requiring Allocation

Paragraph 28-19-274(c) of the Kansas rule provides that the allowance allocation methodology adopted by Kansas in the SIP revision replaces the provisions of 40 CFR 97.411(a), thereby

addressing all allowances that under the default allocation provisions for the Federal trading program would be allocated to units considered existing units for CSAPR purposes (prior to allocation of any otherwise unallocated allowances from the NUSA or Indian country NUSA for Kansas). The same Kansas rule paragraph also provides that the state's allocation methodology replaces the provisions of 40 CFR 97.411(b)(1) and 97.412(a), thereby addressing allocation of allowances in the NUSA established for Kansas under the Federal trading program. In addition, paragraphs 28-19-274(d) and (e) of the Kansas rule provide procedures addressing any otherwise unallocated allowances from the Indian country NUSA for Kansas that may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures. Collectively, the allocation provisions in the Kansas rule therefore enable

Kansas' SIP revision to meet the condition under 40 CFR 52.38(a)(4)(i) that the state's allocation or auction methodology must cover all allowances potentially requiring allocation by the state.

3. Assurance that Total Allocations Will Not Exceed the State Budget

Paragraph 28-19-274(d) of the Kansas rule provides for allowance allocations to be made in fixed amounts set forth in tables adopted by reference into the state rules. For each of the three control periods for which the rule allocates allowances, there is a table providing allocations for the allowances that absent this SIP revision would be allocated pursuant to 40 CFR 97.411(a), 97.411(b)(1), and 97.412(a). For each of the control periods, the sum of the fixed amounts allocated according to these tables is 31,323 allowances, which is equal to the Kansas budget for the control period (31,354 tons) less the amount of the Indian country NUSA for Kansas (31 tons).²⁸ EPA has not yet allocated or recorded CSAPR allowances for the 2017 through 2019 control periods. The allocation methodology in Kansas's SIP revision therefore meets the condition under 40 CFR 52.38(a)(4)(i)(A) that the total amount

²⁸ See 40 CFR 97.410(a)(6)(iv), (a)(6)(vi).

of allowances allocated under the SIP revision (before the addition of any otherwise unallocated allowances from an Indian country NUSA) may not exceed the state's budget for the control period less the amount of the Indian country NUSA for the state and any allowances already allocated and recorded by EPA.

While the Kansas rule also has provisions providing potential allocations of allowances from the Indian country NUSA for Kansas, under paragraph 28-19-274(b) of the Kansas rule the only allowances available for allocation under those provisions are otherwise unallocated allowances that EPA has made available from the Indian country NUSA for state allocation after having carried out the Indian country NUSA allocation procedures. The total of the allowances allocated under the SIP revision and any allowances allocated by EPA from the Indian country NUSA for Kansas therefore will not exceed the state budget, consistent with the purpose of 40 CFR 52.38(a)(4)(i)(A).

4. Timely Submission of State-determined Allocations to EPA

The state-determined allowance allocations established by the Kansas rule for each of the three control periods covered by the rule are included in tables that have been adopted by reference into the state rule and that were provided to EPA as part of the SIP submittal on December 1, 2015. As noted above, in the case of a SIP revision seeking to allocate allowances

starting with the 2017 control period, the earliest deadline for submission to EPA of the state-determined allocations is June 1, 2016. Kansas' SIP revision therefore meets the conditions under 40 CFR 52.38(a)(4)(i)(B) and (C) requiring that the SIP revision provide for submission of state-determined allowance allocations to EPA by the deadlines specified in those provisions.

5. No Changes to Allocations Already Submitted to EPA or Recorded

The Kansas rule includes no provision allowing alteration of allocations after the allocation amounts have been provided to EPA and no provision allowing alteration of any allocations made and recorded by EPA under the Federal trading program regulations, thereby meeting the condition under 40 CFR 52.38(a)(4)(i)(D).

6. No Other Substantive Changes to Federal Trading Program Provisions

Besides the provisions addressing allowance allocations discussed above, the Kansas rule includes a number of provisions defining terms used either in the rule's allocation provisions or in other definitions. In paragraph 28-19-274(a)(1), the rule adopts by reference several terms defined in 40 CFR 97.402, and in paragraph 28-19-274(b), the rule defines a new term "Indian country new unit set-aside allowance" that is used only in the

Kansas rule for purposes of allowance allocations. These provisions do not make substantive changes to the Federal trading program provisions.²⁹

Paragraphs 28-19-274(a)(2)(A) and (B) of the Kansas rule adopt definitions of "administrator", "State", and "permitting authority" that substantively differ from the definitions of these terms in the Federal trading program regulations. While these terms are not used directly in the Kansas rule, they are used in the Federal trading program definitions of some of the other terms that are adopted by reference under paragraph 28-19-274(a)(1). Inclusion of the Kansas rule's definitions of "administrator", "State", and "permitting authority" in the SIP revision therefore would cause the meanings of those other adopted terms as used in the Kansas rule to substantively differ from the meanings of the same terms as used in the Federal trading program regulations. After being advised of these differences by EPA, Kansas elected to exclude the provisions of paragraphs 28-19-274(a)(2)(A) and (B) of the Kansas rule from

²⁹ EPA has proposed to make certain technical corrections to the CSAPR FIP and Federal trading program regulations in order to more accurately reflect EPA's intent as described in the CSAPR rulemaking and has also proposed to replace "TR" with "CSAPR" throughout the regulations (for example, "TR NO_x Annual unit" would become "CSAPR NO_x Annual unit"). See 80 FR 75706, 75758. Because the proposed technical corrections merely clarify and do not change EPA's interpretations, where the proposed corrections would apply to a provision incorporated by reference in the Kansas rule, EPA would interpret the Kansas rule as reflecting the corrections. Further, EPA anticipates that if the proposed nomenclature updates are finalized, the final CSAPR Federal regulations would explicitly provide that terms that include "CSAPR" encompass otherwise identical terms in approved SIP revisions that include "TR".

the SIP revision, as the state's letter submitting the SIP revision makes clear. (Without the excluded provisions, the rule remains fully functional for its intended purpose of allocating CSAPR allowances among the state's units.) Considering Kansas' SIP revision without the excluded rule provisions, EPA has determined that the SIP revision meets the condition under 40 CFR 52.38(a)(4) of making no substantive changes to the Federal trading program regulations beyond the provisions addressing allowance allocations.

V. EPA's Action on Kansas' Submittal

EPA is taking direct final action to approve the revision to Kansas' SIP submitted on December 1, 2015 concerning allocations to Kansas units of CSAPR NO_x Annual allowances for the control periods in 2017, 2018, and 2019. This SIP revision adopts into the SIP the rule codified in Kansas' regulations at K.A.R. 28-19-274 excluding paragraphs 28-19-274(a)(2)(A) and (B). The Kansas rule in turn incorporates a document entitled "TR NO_x annual allowance allocations for 2017, 2018, and 2019," dated July 17, 2015, which contains tables setting forth state-determined allowance allocations to individual Kansas units. Following this approval, allocations of these allowances will be made according to the provisions of Kansas' SIP instead of

CSAPR's default allocation provisions at 40 CFR 97.411(a), 97.411(b) (1), and 97.412(a). Approval of this SIP revision does not alter any provision of the Federal CSAPR NO_x Annual Trading Program as applied to Kansas units other than the allowance allocation provisions, and the FIP requiring the units to participate in that program (as modified by this SIP revision) remains in place. EPA is approving the SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations, as discussed in section IV above. Because the SIP revision addresses only the control periods in 2017 through 2019, absent submission and approval of a further SIP revision, allocations of CSAPR NO_x Annual allowances for control periods in 2020 and later years will be made pursuant to the default allocation provisions.

Large electricity generating units in Kansas are also subject to an additional CSAPR FIP requiring them to participate in the Federal CSAPR SO₂ Group 2 Trading Program. Kansas's SIP submittal does not seek to replace the default allocations of CSAPR SO₂ Group 2 allowances to Kansas units. Approval of this SIP revision concerning another CSAPR trading program has no effect on the Federal CSAPR SO₂ Group 2 Trading Program as

applied to Kansas units, and the FIP requiring the units to participate in that program remains in place.

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Kansas Cross-State Air Pollution Regulations described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and at the appropriate EPA office (see the ADDRESSES section of this preamble for more information)

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required

information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 16, 2016.

Mark Hague,

Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

Part 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R-Kansas

2. Amend §52.870(c), by adding entry 28-19-274, in numerical order, under the subheading entitled "General Provisions" to read as follows:

§52.870 Identification of plan.

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(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
* * * * *				
General Provisions				
* * * * *				
K.A.R. 28-19-274	Nitrogen Oxide allocations	11/6/15	[Insert Federal Register date of publication date] and [Insert Federal Register citation]	Approval of EGU-specific NO _x allocations does not include KAR 28-19-274(a) (2) (A) and (a) (2) (B)
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